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No. 2368

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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STOCKGROWERS' STATE BANK OF MOUNTAINHOME, a Corporation, and THE FIRST NATIONAL BANK OF MOUNTAINHOME, a Corporation,  
Appellants,

vs.

CHARLES E CORKER, Trustee of the Estate of  
THOMAS TRATHEN, a Bankrupt,  
Appellee.

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Transcript of Record.

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Upon Appeal from the United States District Court  
for the District of Idaho, Southern Division.

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FILED

FEB 25 1914



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

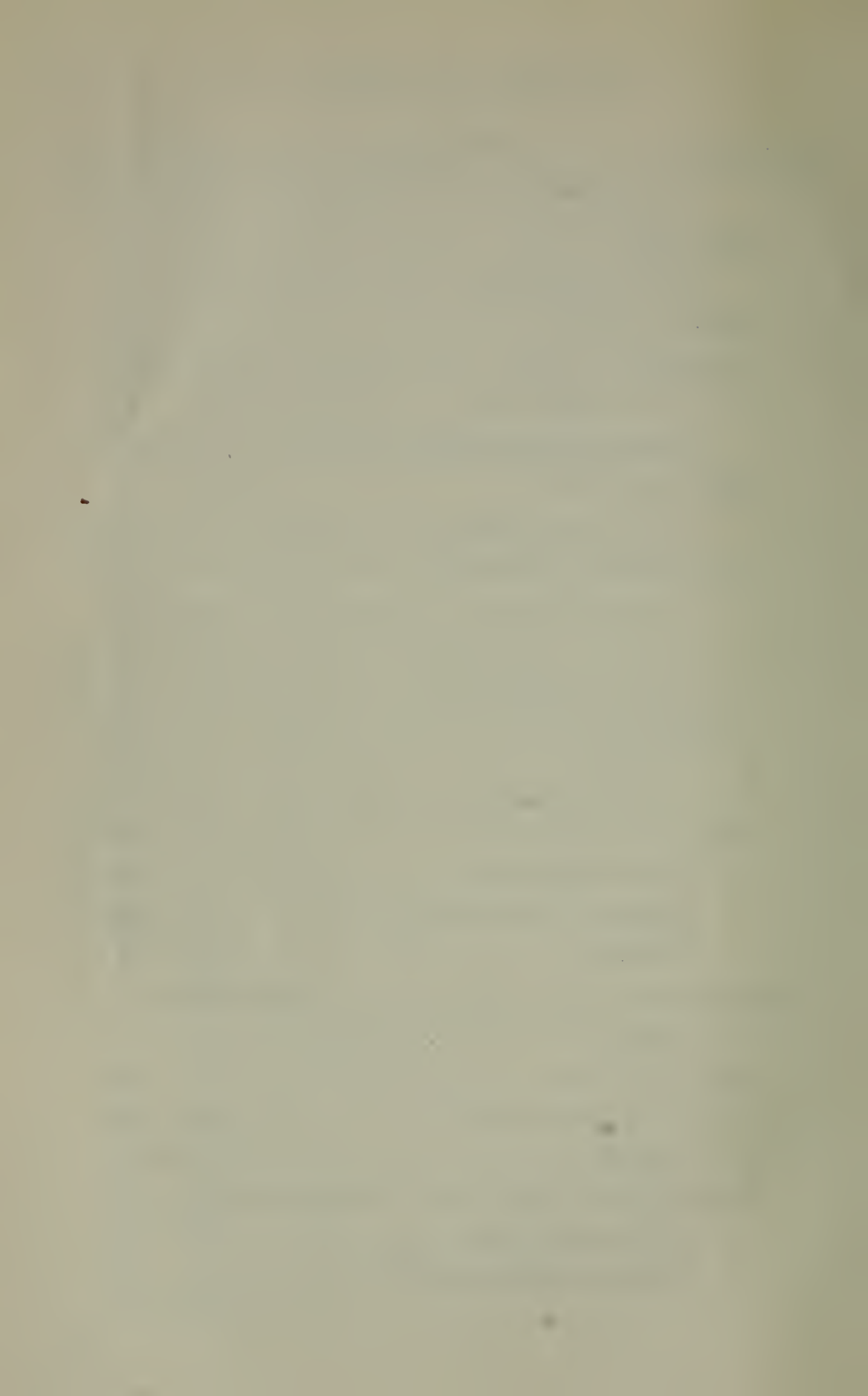
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[Names and Addresses of Attorneys.]

E. M. WOLFE, Mountainhome, Idaho,

WYMAN & WYMAN, Boise, Idaho,

Attorneys for Appellants.

W. C. HOWIE, Mountainhome, Idaho,

HARRY S. KESSLER, Boise, Idaho,

Attorneys for Respondent.

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*In the District Court of the United States for the  
District of Idaho, Southern Division.*

IN EQUITY—No. —.

CHARLES E. CORKER, Trustee of the Estate of  
THOMAS TRATHEN, a Bankrupt,  
Plaintiff,

vs.

STOCKGROWERS' STATE BANK OF MOUN-  
TAINHOME and THE FIRST NA-  
TIONAL BANK OF MOUNTAINHOME,  
Defendants.

**Complaint.**

To the Hon. FRANK S. DIETRICH, Judge of the  
United States Court for the District of Idaho,  
Southern Division.

Charles E. Corker, a citizen of the State of Idaho  
and resident of Mountainhome in the County of  
Elmore, State of Idaho, and Trustee of the Estate  
of Thomas Trathen, a bankrupt, brings this, his bill,  
against the Stockgrowers' State Bank of Mountain-  
home, a banking corporation which now is and dur-

ing all the times hereinafter mentioned has been duly organized and existing under and by virtue of the laws of the State of Idaho and engaged in the banking business at Mountainhome, Idaho, and against the First National Bank of Mountainhome, a banking corporation which now is and during all the times hereinafter mentioned has been duly organized and existing under and in accordance with the banking laws of the United States and engaged in the banking business at Mountainhome, Idaho, Elmore County, State of Idaho, and for cause of action plaintiff states: [1\*]

I.

That this suit is brought for the purpose of avoiding an alleged fraudulent transfer of property by the bankrupt Thomas Trathen, to the defendant the Stockgrowers' State Bank and to recover the said property so transferred or its value from the defendants, the Stockgrowers' State Bank and the First National Bank of Mountainhome.

II.

That one Thomas Trathen was adjudged a bankrupt in this Court on the 23d day of October, 1911, and that your petitioner was thereafter, to wit, on the 18th day of November, 1911, duly appointed and qualified as Trustee of the Estate of Thomas Trathen in Bankruptcy, and ever since has been and now is the duly qualified and acting Trustee of said estate.

III.

That on and for several years prior to the 23d day

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\*Page number appearing at foot of page of original certified Record.

of October, 1911, the date when said Thomas Trathen was adjudged a bankrupt, he, the said Thomas Trathen, was engaged in the furniture at Mountainhome, Idaho, and was the owner of a stock of furniture and fixtures and notes and book accounts of the value of about Three Thousand Dollars (\$3,000.00), and that prior to the 13th day of July, 1911, was doing his banking business as was necessary in connection with the said furniture business with the defendant the First National Bank of Mountainhome, and on said 13th day of July, 1911, the said Thomas Trathen then being insolvent was indebted to the said First National Bank of Mountainhome for money loaned on his promissory note and on overdraft, as your petitioner is informed and believes and on such information and belief states the fact to be, in the sum of about Two Thousand Dollars (\$2,000.00).

#### IV.

That your petitioner is informed and believes and on [2] such information and belief alleges the fact to be that the officers and directors and stockholders of the defendant, the First National Bank of Mountainhome and the officers and directors and stockholders of the defendant the Stockgrowers' State Bank were on the 13th day of July, 1911, in a large part the same and identical persons, and that the officers and directors of both of said banks on said date well knew that said Thomas Trathen was insolvent and unable to meet his obligations, and on the said date the officers and directors of both of the said defendant banks, designing and intending

to secure and obtain for the First National Bank of Mountainhome a preference over other creditors of the said Thomas Trathen, and in fraud of the bankruptcy act of the United States and in violation of the rights of other creditors of the said Thomas Trathen, did then and there collusively and fraudulently plan and arrange and agree with each other and with the said Thomas Trathen that the account of the said Thomas Trathen then due and owing to the First National Bank of Mountainhome should be ostensibly transferred from the First National Bank of Mountainhome to the Stockgrowers' State Bank and that said Stockgrowers' State Bank should make a pretended loan to the said Thomas Trathen and secure from the said Thomas Trathen a chattel mortgage on his stock of furniture and notes and accounts.

V.

That in accordance with the agreement collusively and fraudulently made as aforesaid by and between the officers and directors of the First National Bank of Mountainhome and the Stockgrowers' State Bank and the said Thomas Trathen, the said Thomas Trathen did then and there on the 13th day of July, 1911 and wholly without any consideration therefor, execute and deliver his pretended note to the Stockgrowers' State Bank for the sum of Three Thousand One Hundred Forty-seven and Eighty-four [3] Hundredths Dollars (\$3147.84), and on said date the said Thomas Trathen purporting to secure the aforesaid mortgage executed and delivered to the said Stockgrowers' State Bank a pre-



tended mortgage on the stock of furniture and notes and book accounts at Mountainhome, Idaho, then and there belonging to the said Thomas Trathen.

## VI.

That said pretended note and mortgage were executed and delivered by the said Thomas Trathen at the special instance and request of the officers and directors of the First National Bank of Mountainhome, Idaho, who was then a creditor of the said bankrupt as aforesaid and within four (4) months of the filing of the petition and adjudication in bankruptcy of the said Thomas Trathen, and that said pretended note and mortgage were executed in fraud on the bankruptcy act of the United States and with the intention of creating a preference to the First National Bank of Mountainhome and the effect of such transfer was to enable the First National Bank of Mountainhome to secure a settlement in full of its account against said Thomas Trathen and to obtain a greater percentage of its debts over that of other creditors of the said Thomas Trathen.

## VII.

That thereafter, to wit, on the — day of —, 1911, the defendant, the Stockgrowers' State Bank, acting under and in accordance with the provisions of the aforesaid pretended chattel mortgage which was made on the 13th day of July, 1911, proceeded to foreclose the said pretended mortgage and thereafter caused the stock of furniture and the notes and accounts then belonging to the said

Thomas Trathen to be sold at sheriff's sale in pretended satisfaction of said alleged mortgage and the said Stockgrowers' State Bank bid in and pretended to purchase at said sheriff's sale said stock of furniture and notes and accounts then belonging to the said Thomas Trathen [4] and applied the same on their unlawful purported indebtedness against the said Thomas Trathen.

### VIII.

That the stock of furniture aforesaid and notes and accounts constituted the entire assets of the said Thomas Trathen at the time that he was adjudicated a bankrupt as aforesaid and that the said defendants have failed and refused to turn over to your petitioner the said furniture, book accounts and notes and have not turned over the same nor accounted for the value thereof.

### IX.

That there are various and sundry other creditors of the said Thomas Trathen whose claims have been filed and allowed against said estate with claims amounting to the sum of about Two Thousand and no/100 (\$2,000.00) Dollars, and unless and until the aforesaid preference secured by the defendants herein is set aside, and the said furniture and notes and accounts, or the value and proceeds thereof are returned to your petitioner, there are and will be no assets belonging to said estate to apply towards the just demands of other creditors of the estate of Thomas Trathen.

### X.

That your petitioner has been duly authorized by

W. H. Savidge, the duly appointed and acting Referee in Bankruptcy for said estate, to bring this action herein.

### XI.

That your petitioner is informed and believes, and on such information and belief states the fact to be, that the value of said stock of furniture and notes and accounts wrongfully and unlawfully taken and possessed by the Stockgrowers' State Bank as aforesaid is and was the sum of Three Thousand Dollars (\$3000), and that said defendants still have in their possession the stock of furniture and notes and accounts and [5] still refuse to deliver and turn over the same to your petitioner.

WHEREFORE, plaintiff prays that the transfer by the said Thomas Trathen of his stock of furniture, notes and accounts to the Stockgrowers' State Bank may be avoided and that the pretended note and mortgage executed by the said Thomas Trathen to the Stockgrowers' State Bank on the 13th day of July, 1911, be declared null and void, and that the aforesaid property so transferred, or its value, be recovered from the said defendants and that plaintiff may have judgment against said defendants for the interest on the value thereof at the rate of seven per cent (7%) per annum from the 18th day of November, 1911, and that plaintiff may have and recover from the defendants his costs herein.

W. C. HOWIE,  
Residing at Mountainhome, Idaho,  
HARRY S. KESSLER,  
Residing at Boise, Idaho,  
Solicitors for Plaintiff.

United States of America,  
District of Idaho,—ss.

I, Charles E. Corker, the plaintiff herein mentioned and described in the foregoing bill of complaint, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

C. E. CORKER,  
Petitioner.

Subscribed and sworn to before me this 8th day of August, 1913.

[Seal]

W. C. HOWIE,  
Notary Public in and for Elmore County, State of Idaho.

[Endorsed]: Filed August 9th, 1913. A. L. Richardson, Clerk. By E. B. Yarrington, Deputy.  
[6]

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IN EQUITY.—No. —.

CHARLES E. CORKER, Trustee of the Estate of  
THOMAS TRATHEN, a Bankrupt,  
Plaintiff,

vs.

STOCKGROWERS' STATE BANK OF MOUNTAINHOME and THE FIRST NATIONAL BANK OF MOUNTAINHOME,  
Defendants.



**Answer of First National Bank of Mountainhome.**

THE ANSWER OF THE ABOVE-NAMED DEFENDANT TO THE BILL OF COMPLAINT OF THE ABOVE-NAMED PLAINTIFF:

In answer to the said Bill the defendant, the First National Bank of Mountainhome, says as follows:

I.

Admits that for several years prior to the 13th day of July, 1911, Thomas Trathen was engaged in the furniture busines at Mountainhome, Idaho, and was the owner of a stock of furniture, fixtures, notes and book accounts; admits that the said Thomas Trathen on and prior to the 13th day of July, 1911, was doing his banking business with this defendant and admits that on that date the said Thomas Tra-then was indebted to it for money loaned upon his promissory note in the sum of about Twenty-three Hundred (\$2,300) Dollars; that of said sum One Thousand Seven Hundred and four and 10/100 (\$1,704.10) Dollars was secured by a mortgage upon the furniture and fixtures owned by the said Thomas Tra-then, and covered all of the furniture and fixtures owned by him and in his possession on the 13th day of July, 1911, which said mortgage was executed on the 12th day of April, 1909, and filed for record in the office of the County Recorder of Elmore County, Idaho, on the 13th day of May, 1909, a copy of which mortgage is hereto attached marked Exhibit "A" [7] and made a part of this answer.

II.

That this defendant denies that the officers, di-

rectors and stockholders of this defendant and of the Stockgrowers' State Bank are the same and identical persons as set forth in paragraph IV of plaintiff's bill, but allege the fact that this defendant has five directors, only two of whom are directors of the Stockgrowers' State Bank, which bank has nine directors; denies that the officers and directors of this defendant knew that the said Thomas Trathen was insolvent and unable to meet his obligations but admits that he was behind in some of his accounts and some of his creditors were pressing him for payment, among which was this defendant, and it insisted that he make payment of his account to them; denies that the officers of this defendant and the Stockgrowers' State Bank fraudulently or collusively planned and arranged among themselves to the effect and to the end that the Stockgrowers' State Bank should make a pretended loan to the said Thomas Trathen and that it should secure from him a chattel mortgage on his stock of furniture, notes or accounts.

### III.

Deny that in accordance with any agreement collusively or fraudulently made and entered into between the officers of the First National Bank and the Stockgrowers' State Bank the said Thomas Trathen on the 13th day of July, 1911, and without consideration executed and delivered to the Stockgrowers' State Bank his note for Three Thousand One Hundred Forty-seven and 84/100 (\$3,147.84) Dollars secured by a mortgage upon his stock of furniture at Mountainhome, and deny that the said note

and mortgage were collusively made and deny that they were made without consideration. [8]

## IV.

Denies that the said note and mortgage was executed by the said Thomas Trathen at the special instance and request of the directors of this defendant, except as the Bank insisted upon securing payment of his obligations; denies that the said mortgage and note was given with the intention of giving this defendant a preference and allege that at that time this defendant had and owned a mortgage upon the entire stock of furniture of the said Thomas Trathen to the full value thereof, which mortgage was executed long prior to the 13th day of July, 1911, and more than four months prior thereto, Exhibit "A"; that at the time the said Thomas Trathen secured from the Stockgrowers' State Bank the said loan the directors of the said bank did not know that the said Thomas Trathen was insolvent or a bankrupt, or unable to pay his creditors and was in fact unfamiliar with his business, but the loan was made upon his representations that his stock of goods and fixtures were of a greater value than it turned out to be or actually was at that time.

## V.

Admit that the Stockgrowers' State Bank foreclosed its mortgage so made and executed on the 13th day of July, 1911, on or about the 2d day of October, 1911, and caused the said furniture to be sold by the Sheriff of the County of Elmore and the same was purchased by the said Stockgrowers' State Bank and possession thereof taken on the 3d

day of October, 1911, and the proceeds thereof applied in payment of his said note and mortgage, and deny that there was any fraud in said foreclosure, but the said foreclosure was made by the said bank simply because of the failure of the said mortgagor to comply with the terms and conditions thereof.

## VI.

Admits that the stock of furniture, fixtures notes and book accounts constituted practically the entire assets of [9] the said Thomas Trathen but that at the time that his petition in bankruptcy was filed the said Thomas Trathen had no right, title or interest therein whatever; that the said Stockgrowers' State Bank had possession of the stock of furniture, fixtures etc.

WHEREFORE, this defendant prays that plaintiff take nothing by this suit and for such other and further relief as good conscience may sustain and for costs of suit.

L. B. GREEN,  
E. M. WOLFE,

Attorney, Residence Mountainhome, Idaho.

United States of America,  
District of Idaho,—ss.

I, F. E. Austin, Cashier of the above-named defendant, do hereby make solemn oath that the statements contained herein are true and correct to the best of my information, knowledge and belief.

F. E. AUSTIN.



Subscribed and sworn to before me this 22d day of Sept., 1913.

[Seal]

RUBY MELLEN,  
Notary Public. [10]

**Exhibit "A" [to Answer of First National Bank of Mountainhome—Chattel Mortgage].**

THIS INDENTURE, Made this 12th day of April in the year of our Lord one thousand nine hundred and nine between Thomas Trathen residing at Mountainhome, County of Elmore, State of Idaho, and by profession, trade or occupation Merchant the party of the first part, and W. D. Evans and John Owens residing at Mountainhome, County of Elmore, State of Idaho and by profession, trade or occupation Hotel-keeper and Rancher the parties of the second part.

WITNESSETH, That the said party of the first part for and in consideration of the sum of Seventeen Hundred Dollars, to him in *made* paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant bargain, sell, assign, transfer and set over, unto the said parties of the second part, all those certain goods and chattels now being in Elmore County, State of Idaho, and described as follows:

All of the furniture, carpets, music, musical instruments, picture and picture frames, draperies, window-shades, linoleums, glassware, bric-a-brac, etc., kept in that certain storeroom situated in the Bailey Siffert Garrett Company's block, Mountainhome, Idaho, known as the Trathen Furniture Store, also

all said goods and merchandise owned by the said mortgagor in transit or stored in warehouses in Mountainhome. The mortgagees having guaranteed the payment of the within note, and this mortgage is given to secure them from loss.

TO HAVE AND TO HOLD, All and singular, the said goods and chattels above bargained and sold, or intended so to be, unto the said parties of the second part, their executors, administrators and assigns forever. Provided, nevertheless, that [11] these presents are upon this express condition, that if the said party of the first part, his executors, administrators or assigns shall well and truly pay unto the said party of the second, their executors, administrators or assigns, the sum of Seventeen Hundred Dollars, according to the conditions of one certain promissory note, of which the following is a true copy:

\$1700. Mountainhome, Idaho, April 12th, 1909.

Three months after date, I, we, or either of us, promise to pay to the First National Bank of Mountainhome, Idaho, or order, Seventeen Hundred Dollars, for value received, negotiable and payable at the First National Bank, Mountainhome, Idaho, in gold coin of the United States of America, of the present standard of weight and fineness, with interest thereon from date until paid, both before and after maturity, at the rate of ten per cent per annum, payable at maturity. In case this note is collected by an Attorney, either by suit or otherwise, I, we, or either

of us, promise to pay all costs and a reasonable amount as attorney's fees.

THOMAS TRATHEN.

No.

Due.

P. O.

—as by the said promissory note, reference being thereunto had, may fully appear, then these presents shall be void. But in case default be made in the payment of said principal sum of money, or any part thereof, or interest, or any installment thereof, as provided in said note, then and from thenceforth it shall be optional with the said parties of the second part, their executors, administrators or assigns, to consider the whole of said principal and interest expressed in said note as immediately due and payable, although the time expressed in said note for the payment thereof shall not have arrived; and immediately thereupon and without notice of such election to consider the [12] whole sum to be due, it shall be lawful for, and the said party of the first part does hereby authorize and empower the said party of the second part, their executors, administrators or assigns with the aid and assistance of any person or persons, to enter the premises or such other place or places as the said goods or chattels are or may be placed and take and carry away the said goods and chattels and sell and dispose of the same for the best price they can obtain by due process of law, or by agreement of the parties to this mortgage, their executors, administrators or assigns, and out of the money arising therefrom to retain and pay the sum above

mentioned, and interest as aforesaid, and all costs and charges touching the same, together with counsel fees in such sum as the Court may adjudge reasonable, if this mortgage be foreclosed by decree of Court, or if it be foreclosed by decree and sale, then counsel fees in the sum of One Hundred and Fifty Dollars, which sum is hereby stipulated by the parties hereto as reasonable and proper counsel fees for such foreclosure, rendering the overplus, if any, unto the said party of the first part, or to his executors, administrators or assigns. And until default be made in the payment of said sum of money, the said party of the first part, his executors, administrators or assigns, may remain and continue in the quiet and peaceable possession of the said goods and chattels, and in full and free use and enjoyment of the same.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set *his hand* and seals the day and year first above written.

THOMAS TRATHEN.

Signed, sealed and delivered in the presence of:

State of Idaho,

County of Elmore,—ss. [13]

On this 12th day of April, in the year 1909, before me, Elizabeth Greenwald, a Notary Public in and for said county, personally appeared Thomas Trathen, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set



my hand and affixed my official seal the day and year  
in this certificate first above written.

[Seal]

ELIZABETH GREENWALD,

Notary Public.

No. 34—9237.

CHATTEL MORTGAGE.

Trathen

to

Evans & Owens.

State of Idaho,

County of Elmore,—ss.

I hereby certify that this instrument was filed for  
record at the request of H. E. Reckmeyer at 55 min-  
utes past 9 o'clock A. M., this 13th day of May, 1909,  
in my office, and duly recorded in Book 2 of Chattel  
Mortgages at page 61.

F. C. SMITH,

Ex-officio Recorder.

By Louis E. Nicholson,

Deputy.

Fees 50¢Pd.

[Endorsed]: Filed Sept. 3, 1913. A. L. Richard-  
son, Clerk. [14]

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

IN EQUITY.—No. —.

CHARLES E. CORKER, Trustee of the Estate of  
THOMAS TRATHEN, a Bankrupt,  
Plaintiff,

vs.

STOCKGROWERS' STATE BANK OF MOUN-  
TAINHOME and THE FIRST NATIONAL  
BANK OF MOUNTAINHOME,  
Defendants.

**Answer of the Stockgrowers' State Bank of  
Mountainhome.**

THE ANSWER OF THE ABOVE-NAMED DE-  
FENDANT TO THE BILL OF COMPLAINT  
OF THE ABOVE-NAMED PLAINTIFF:

In answer to the said bill the defendant, the Stock-  
growers' State Bank of Mountainhome, says as fol-  
lows:

I.

Admit that for several years prior to the 23d day  
of July, 1911, Thomas Trathen was engaged in the  
furniture business at Mountainhome, Idaho, and was  
the owner of a stock of furniture, fixtures, notes and  
book accounts; admit that the said Thomas Trathen  
on and prior to the 13th day of July, 1911, was do-  
ing his banking business with the First National  
Bank and admits that on that date the said Thomas  
Trathen was indebted it for money loaned upon  
his promissory note in the sum of about Twenty-three

Hundred (\$2,300) Dollars; that of that sum One Thousand Seven Hundred and Four and 10/100 (\$1,704.10) Dollars was secured by a mortgage upon the furniture and fixtures owned by the said Thomas Trathen and covered all of the furniture and fixtures owned by him and in his possession on the 13th day of July, 1911, which said mortgage was executed on the 12th day of April, 1909, and filed for record in the office of the County Recorder of Elmore County, [15] Idaho, on the 13th day of May, 1909, a copy of which mortgage is hereto attached marked Exhibit "A" and made a part of this answer.

## II.

That this defendant denies that the officers and directors and stockholders of the First National Bank are the same and identical persons as set forth in paragraph IV of plaintiff's bill, and allege the fact to be that this defendant bank has Nine Directors, only two (2) of whom are directors of the First National Bank, which said Bank has five (5) directors; denies that the officers and directors of this defendant knew that the said Thomas Trathen was insolvent and unable to meet his obligations, but admits that he was behind in some of his accounts and that some of his creditors were pressing him for payment, among which was the First National Bank, and it insisted that he make payment of his account to them; denies that the officers of this defendant bank and the First National Bank fraudulently or collusively planned and arranged among themselves to the effect and to the end that this defendant bank should make a pretended loan to the said Thomas

Trathen, or make any loan to the said Thomas Trathen, and that it should secure from him a chattel mortgage on his stock of furniture, notes or accounts.

### III.

Denies that in accordance with any agreement collusively or fraudulently made and entered into between the officers of this defendant bank and the First National Bank, the said Thomas Trathen, on the 13th day of July, 1911, and without consideration, executed and delivered to this defendant his note for Three Thousand One Hundred and Forty-seven and 84/100 (\$3,147.84) Dollars, secured by a mortgage upon his stock of furniture at Mountainhome, and denies that the said note and mortgage were collusively made, and denies that they were made without consideration. [16]

### IV.

Denies that the said note and mortgage was executed by the said Thomas Trathen at the special instance and request of the directors of the First National Bank, except as said bank insisted upon securing payment of his obligations; denies that the said note and mortgage was given with the intention of giving the First National Bank a preference and allege that said bank at that time had a mortgage upon the entire stock of furniture of the said Thomas Trathen to the full value thereof, which mortgage was executed long prior to the 13th day of July, 1911, and more than four months thereto; that at the time the said Thomas Trathen secured from this defendant the said loan the Directors of said bank did not know that the said Thomas Trathen was insolvent

or a bankrupt or unable to pay his creditors and was in fact unfamiliar with his business, but the loan was made upon his representations that his stock of goods and fixtures were of a greater value than what it turned out to be or actually was at that time.

## V.

Admits that this defendant foreclosed its mortgage so made and executed on the 13th day of July, 1911, on or about the 2d day of October, 1911, and caused the said furniture to be sold by the Sheriff of Elmore County and the same was purchased by this defendant and possession thereof taken on the 3d day of October, 1911, and the proceeds of sale applied in payment of his said note and mortgage, and denies that there was any fraud in the said foreclosure, but the foreclosure was made by this defendant simply because of the failure of the said mortgagor to comply with the terms and conditions thereof.

## VI.

Admits that the stock of furniture, fixtures, notes and book accounts constituted practically the entire assets of the said Thomas Trathen, but at the time that his petition in bankruptcy was filed the said Thomas Trathen had no right, title or interest therein whatever; that the said Stockgrowers' State Bank had possession of the said furniture, fixtures, etc.  
[17]

## VII.

FOR A FURTHER ANSWER TO THE PLAINTIFF'S BILL THE DEFENDANT, THE STOCKGROWERS' STATE BANK ALLEGES:

That the mortgage held and owned by the First



National Bank and which was executed to W. D. Evans and John Owens was a first lien upon the entire stock of furniture and fixtures owned by the said Thomas Trathen on the 13th day of July, 1911, and was in all respects superior to every claim of every creditor of the said Thomas Trathen, and that because of the loan by this defendant to the said Thomas Trathen on the 13th day of July, 1911, was discharged and satisfied of record. This defendant should be entitled to, and given the benefit of, all of the rights accruing under the said mortgage and the same should be considered and held to be the property of this defendant and to the extent that the said mortgage was a lien upon the property of the said Thomas Trathen and the mortgage executed to this defendant on the 13th day of July, 1911, should be considered as a renewal thereof.

WHEREFORE, defendant prays that the plaintiff take nothing by this suit and for such other and further relief as good conscience may sustain and for costs of suit.

T. B. GREEN.

E. M. WOLFE,

Attorney. Residence, Mountainhome, Idaho.

United States of America,

District of Idaho,—ss.

I, J. H. Whitson, cashier of the above-named defendant, do hereby make solemn oath that the statements contained herein are true and correct to the best of my knowledge, information and belief.

J. H. WHITSON.

Subscribed and sworn to before me this 3d day of September, 1913.

[Seal] ELIZABETH GREENWALD,  
Notary Public Elmore Co., Idaho.

My commission expires Feb. 16, 1917.

Exhibit "A" omitted. Same as in Answer of First National Bank of Mountainhome.

[Endorsed]: Filed Sept. 4, 1913. A. L. Richardson, Clerk. [18]

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*In the District Court of the United States for the  
District of Idaho, Southern Division.*

IN EQUITY—No. 449.

CHARLES E. CORKER, Trustee of the Estate of  
THOMAS TRATHEN, a Bankrupt,  
Plaintiff,

vs.

STOCKGROWERS' STATE BANK OF MOUNTAINHOME and THE FIRST NATIONAL  
BANK OF MOUNTAINHOME,  
Defendants.

**Decree.**

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

That the transfer and mortgage made and executed by the said Thomas Trathen to the Stockgrowers' State Bank on the 13th day of July, 1913, of the stock of furniture, notes and accounts of the said Thomas

Trathen, was null and void as against the rights of other creditors of the said Thomas Trathen, and said First National Bank of Mountainhome by said transfer obtained a greater percentage of its debt against the said Thomas Trathen than other creditors of the same class; and that the sale thereof by the Sheriff of Elmore County, Idaho, under proceedings in foreclosure of said mortgage was and is null and void.

THEREFORE, it is ordered, adjudged and decreed that the plaintiff do have and recover of and from the defendants the stock of furniture owned and possessed by the said Thomas Trathen on the 13th day of July, 1911, and sold as aforesaid by the sheriff of Elmore County, on the 3d day of October, 1911, particularly described as follows, to wit: [19] 4 alarm clocks, 5 bottles of glue, large lot of miscellaneous dishes, 1 library table, 24 large lamps, 2 pedestals, 2 common lamps, 3 music cabinets, 2 writing desks and bookcase combined, 2 combination china closets and buffet, 24 bottles nulae cleanser, 21 fruit and cake plates, 6 small waste baskets, 1 small corner cabinet, 1 plate rail, 2 jardinieres, 4 vases, 1 small settee, 58 Edison records, 1 electric lamp, 1 hall tree, 24 dressers, 26 iron bedsteads, 1 piano-stool, 3 kitchen cabinet tables, 35 bedsprings, 3 washstands, 1 lot of picture frame moulding, 18 rocking-chairs, 10 pitchers and bowls, 14 chambers, 9 center stands, 1 ironing-board, 5 quilts, 4 door mats, 3 toy pianos, 1 box assorted children's toys, 4 clock stands, 18 knock-down dining-room chairs, 5 baby carriages, 13 mattresses, 9 cards carpet fringe, 4 ironing-rack stands, 58 assorted ingrain wallpaper,



3 round dining-room tables, 1 sideboard, 3 plain kitchen tables, 3 rolls carpet paper, 90 large pictures in frames, 47 dining-room chairs, 3 baby-basket chairs, 6 slop jars, 4 picture-frame easels, 9 feather dusters, 9 small mirrors, 5 pillows, 6 suitcases, 1 toy dresser, 2 toy stands, 4 cuspidors, 3 refrigerators, 5 racks assorted ingrain paper, 1 combease, 1 card upholstery cord, 7 racks table leaves, 1 child's oak chair, 6 steel spring sanitary cots, 2 clothes racks, 2 racks for furniture, 1 floor showcase, 34 pairs lace curtains, 1 small blackboard, 2 small dining-room tables, 10 rug hangers, 1 round oak heating stove, 1 ladder, 64 window-shades, 13 boxes assorted window glaze, 22 window-shade rollers, 1 small desk, 2 small rugs, 1 spool of twine, 2 footstools, 1 folding-bed, 1 cupboard, 1 bookcase, 2 pair stretchers, 1 roll matting, 4 small rolls carpet, 1 large rug, 4 small rolls linoleum, 1 truck, 4 washstand racks, 1 carpet-sweeper holder, 1 carpet-sweeper, 1 office desk, 1 baby crib, 1 large map, 1 bundle hardwood rounds for chairs, all tools, oils, fixtures, varnish, trimmings, furniture, and goods, wares and merchandise in the store of the mortgagor, situate in the Bailey-Siffert-Garrett building in Mountainhome, and in storehouse on the corner of Jackson Avenue and Bennett Street.

[20]

Also all notes and accounts then belonging to the said Thomas Trathen,

And it is further ordered, adjudged and decreed that if the said defendants do not redeliver said property above mentioned to plaintiff within 20 days from and after the filing of this decree, that plaintiff have

execution against the said defendants and each of them for the full amount thereof, to wit, the sum of Two Thousand Four Hundred Sixty-five and Eighteen Hundredths Dollars (\$2,465.18), the value thereof, together with interest thereon at the rate of seven per cent per annum from the 18th day of November, 1911, and for costs of suit hereby taxed at One Hundred Forty and 15/100 Dollars.

FRANK S. DIETRICH,

Judge of the United States Court for the District of Idaho, Southern Division.

[Endorsed]: Filed Oct. 30, 1913. A. L. Richardson, Clerk. [21]

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*In the District Court of the United States for the  
District of Idaho, Southern Division.*

CHARLES E. CORKER, Trustee of the Estate of  
THOMAS TRATHEN, a Bankrupt,  
Plaintiff,

vs.

STOCKGROWERS' STATE BANK OF MOUN-  
TAINHOME and THE FIRST NATIONAL  
BANK OF MOUNTAINHOME,  
Defendants.

### **Statement of Evidence.**

BE IT REMEMBERED, that on this 8th day of October, 1913, the above-entitled cause came regularly on for trial before the above-entitled court, whereupon the following proceedings were had.

[**Testimony of C. E. Corker, for Plaintiff.**]

C. E. CORKER, a witness on behalf of plaintiff, being first duly sworn, testified as follows:

(Testimony of C. E. Corker.)

I live at Mountainhome, Idaho. I am the duly appointed, qualified and acting Trustee in Bankruptcy of the estate of Thomas Trathen. After my appointment as such I served written notice upon Trathen to which he made a written reply. The above were thereupon introduced in evidence as Plaintiff's Exhibits 1 and 2.

**[Plaintiff's Exhibit No. 1—Notice to Thomas Trathen and Demand.]**

*In the District Court of the United States for the District of Idaho.*

**IN BANKRUPTCY.**

In the Matter of THOMAS TRATHEN,

Bankrupt.

To Thomas Trathen the Above-named Bankrupt:

You are hereby notified that I have been duly appointed and have qualified as trustee in bankruptcy in the above-entitled matter, and I hereby demand of you possession of all property, books, records and all other things now in your possession to which I am entitled by virtue of such office of trustee. Please render me a full statement of your property and effects.

Dated this 14th day of December, 1911. [22]

C. E. CORKER,

Trustee of the Estate of Thomas Trathen, Bankrupt.

Served Dec. 19, 1911.

**[Plaintiff's Exhibit No. 2—Reply of Thomas Trathen to Trustee.]**

Mountainhome, Idaho, Dec. 29, -11.

C. E. Corker, Trustee.

I herewith submit statement of property and effects in my name, my furniture stock amounting to about \$3,000 is now in the hands of the Stockgrowers' Bank of this City. I have no other property of any value outside of my legal exemptions.

Signed—THOMAS TRATHEN,

I also made a written demand on the Stockgrowers' State Bank, of which the following is a copy:

**[Notice to Stockgrowers' State Bank of Mountainhome and Demand.]**

*In the District Court of the United States for the District of Idaho.*

**IN BANKRUPTCY.**

In the Matter of THOMAS TRATHEN,

Bankrupt.

To the Stockgrowers' State Bank of Mountainhome, Idaho.

You are hereby notified that I am the duly appointed, qualified and acting trustee of the estate of Thomas Trathen, a bankrupt, and I hereby demand of you immediate possession of all property and effects of every kind and description of said bankrupt now in your possession including the stock of general merchandise of said Thomas Trathen now held by

you. Please render a statement.

Dated this 14th day of December, 1911.

C. E. CORKER,

Trustee of the Estate of Thomas Trathen, a Bank-  
rupt. [23]

That Bank made no written reply. At a second and third time I went in they referred me to their attorney, L. B. Green of Mountainhome. I went to see him and he stated they had the property up there storing it, waiting for somebody to raise a rough house. They refused to deliver the property to me. This was after the foreclosure sale. The demand on the Bank was after the foreclosure [39] sale. I have not been able to secure any assets from the estate of Thomas Trathen.

Witness excused.

**[Testimony of J. H. Whitson, for Plaintiff.]**

Whereupon J. H. WHITSON, a witness on behalf of plaintiff, being first duly sworn, testified as follows:

I reside at Mountainhome and am the Cashier of the Stockgrowers' State Bank and have been such since July, 1912. Prior to that time, I was book-keeper and Clerk in that bank for two and one-half years.

A certified copy of the chattel mortgage from Trathen to the Stockgrowers' State Bank was thereupon admitted in evidence as Plaintiff's Exhibit 4. The material parts of it are as follows:



**[Plaintiff's Exhibit No. 4 (Material Parts of).]**

The mortgage is dated July 13, 1911, and is given to secure the payment of a note for \$3,147.84, dated on the same day and due on demand. The note is payable to the Stockgrowers' State Bank and bears interest at the rate of ten per cent per annum. The mortgage contains the usual provisions and is duly acknowledged and sworn to and was duly filed for record on July 13, 1911, office County Recorder, Elmore County, Idaho. The following description of the property mortgaged and provision occur therein:

“All furniture, carpets, pictures, picture frames, music, musical instruments, wallpaper, glass, glassware, porcelain ware, stoves, bedding, chinaware, dishes, etc., and all other goods, wares and merchandise now in or to be kept in the store of the mortgagor situated in the Bailey-Siffert-Garrett building in Mountainhome, and in his storehouse on the corner of Jackson Avenue and Bennett Sts., in said town, and on all such furniture, goods, wares and merchandise as may be placed in said store or stock of goods from time to time during the life of this mortgage.

“The mortgagor may continue in possession of this property [40] and sell and dispose of the same in the regular retail way, but for cash, and he must account every day for the proceeds of the sales, which proceeds must be applied upon this mortgage. A failure to so account to the mortgagee will authorize it to consider the claim due and to take possession of the property covered by this mortgage and to sell and dispose of the same. At any time that the mort-

(Testimony of J. H. Whitson.)

gagee herein or the cashier thereof may feel unsafe in the security, or if for any cause he deems it advisable, the said mortgagee may immediately take possession of the property covered by this mortgage and may sell and dispose of the same as herein otherwise provided."

The witness continuing: I have charge of the books of account and records of the Bank. On July 13, 1911, F. P. Ake was President, R. W. Smith, Vice-president, Worth S. Lee, Cashier, and the directors were the above-named officers together with Will T. Montgomery, R. P. Chattin, A. M. Hall, J. M. Cowen and W. H. Blackman.

The records of the bank show that it paid out \$2,294.35 on the Trathen note. The face of which note is for \$3,147.84. The \$2,294.35 was paid to the First National Bank at Mountainhome.

I had nothing to do with the negotiations or making of the loan. L. B. Green was the bank's attorney at that time. As to whether Mr. Trathen had done any business with the Stockgrowers' Bank prior to his giving the note and mortgage I believe I have seen his name on our books. This was several years before. I know G. A. Herder, who is operating as *Thompson Furniture* at Mountainhome. He had an account at our bank up to about the time the mortgage was given by Trathen. His account was closed August 5, 1911. He was indebted to the bank about \$3,400.00 at that time. It was all paid August 5, 1911. My impression is that Mr. Lee told me this money came from the First National Bank at Mountainhome. Neither Herder nor the Thomp-

(Testimony of J. H. Whitson.)

son Furniture Company have done any business at our bank since August 5, 1911. On July 13, 1911, the Thompson Furniture Company had a note and an open account at the Stockgrowers' Bank. The note was for \$3,400.00 and the open account was for \$169.39. Mr. Herder is still in the same business at Mountainhome, conducting it under the name of the Thompson Mercantile Company.

**[Testimony of F. E. Austin, for Plaintiff.]**

Whereupon F. E. AUSTIN, a witness on behalf of plaintiff, being first duly sworn, testified as follows: [24]

I live at Mountainhome. I am the Cashier of the First National Bank, and have held that position for a trifle over three and half years last past. The officers of the First National Bank on July 13, 1911, were R. P. Chattin, President; Arthur Pence, Vice-president; F. E. Austin, Cashier; Will T. Montgomery, Assistant Cashier. The directors were Messrs. Chattin, Montgomery, Hein, Pence and Blunk. R. W. Smith was a stockholder but not an officer. On July 13, 1911, Trathen owed two notes at the Bank, one for \$1700.00 and one for \$500.00, with some accrued interest. Our records show these notes were paid on August 5, 1911, the money coming from the Stockgrowers' State Bank. Trathen's account with us was closed on October 9, 1912. He kept banking with us right along after this account was closed up until that time. I had nothing to do with Herder's loan. Green was the bank's attorney at the time. My recollection is that we loaned Herder \$3,606.69, the money being paid to Mr. Lee, the Cashier of the



(Testimony of F. E. Austin.)

Stockgrowers' State Bank. I know nothing about the circumstances of the negotiations of this loan and the securing of money from the Stockgrowers' State Bank to pay the Trathen account. Herder did not speak to me about getting the loan.

Cross-examination.

It is the custom of the banks at Mountainhome to carry merchants in a general way. It was my impression the Trathen loan was sufficient to ease him over with his creditors and to enable him to get in better shape. The \$1700.00 note was secured by a mortgage to our bank. The copy attached to the answer is a correct copy of that mortgage.

Redirect Examination.

I did not know on July 13, 1911, that Trathen was owing other parties. I knew there were sight drafts against him but I did not know how much, or to what extent. I never talked with Mr. [25] Wolfe regarding his having any accounts. The occasion of the closing of the Trathen account at our bank was that Mr. Trathen desired more money and I declined to make a larger loan and was supported by the directors. He wanted more money to take up some of these sight drafts to put his business in better condition. I was not present at any conference between the officers and directors of the First National Bank and of the Stockgrowers' Bank when this account was discussed. I do not know that there was any such conference. In a general way I discussed with the officers and directors of my bank the fact Trathen wanted more money and merely in a general way

(Testimony of F. E. Austin.)

called attention to the fact these drafts were out. Mr. Chattin was one of the directors to whom I spoke. I considered the Trathen account unsatisfactory because I had made demands for accrued interest and it was not forthcoming. I imagine I had investigated his assets and knew practically what they consisted of. I presume I advised the Board of Directors as to what his property consisted of though I cannot say positively. The First National Bank took a mortgage from the Thompson Furniture Company when that account was transferred to our Bank.

**[Testimony of G. W. Herder, for Plaintiff.]**

G. W. HERDER, a witness on behalf of plaintiff, being first duly sworn, testified as follows:

I live at Mountainhome. I am President and Manager of the W. L. Thompson Furniture Company, Limited, having held these positions for a little over five years last past. In July, 1911, that company was banking with the Stockgrowers' State Bank. I had a loan of \$3,400.00 and there was some interest and I believe a little overdraft. The account was then transferred to the First National Bank. The Stockgrowers' Bank called the loan and I got the money from the other bank to pay them by a loan secured by a mortgage. I did not have the ready money to meet the Stockgrowers' loan and in looking around for another loan, Mr. Montgomery suggested that I might or could get it from the First National Bank [26] and I took it up with Montgomery and Chattin and the bank gave me the loan. I gave additional security and the Stockgrowers'

(Testimony of G. W. Herder.)

loan was paid that way. Mr. Montgomery suggested to me that I could get this loan in my place of business and then I met Montgomery and Chattin and one or two other officers of the bank. I was called in by them after I had been talking with Montgomery. Montgomery, Chattin and Ake were in there part of the time and also Roscoe Smith. Montgomery did most of the talking, stating that the Stockgrowers' wanted the loan paid and that the First National would give me the money. Mr. Smith informed me that they could not any longer carry me. He was an officer in the Stockgrowers' Bank at that time. I believe Chattin and Montgomery did the talking principally. Smith was not in there only a little while and he took part this far, he advised me the Stockgrowers' wanted the loan closed up. Montgomery was the first man who suggested my getting the loan at the First National Bank. He came into my place of business and I don't remember just how it came up but he told me I could get the sum from the First National. I don't think I asked him for it; it was in general conversation that it was brought up.

#### Cross-examination.

I gave the First National additional security for the money I borrowed. The security was ample. Mr. Green drew up the mortgage. The security consisted of a mortgage on the stock and on the store building, together with 160 acres of timber land and my residence and grounds. Mr. Green, their attorney, drew up the mortgage.

**[Testimony of E. M. Wolfe, for Plaintiff.]**

E. M. WOLFE, a witness on behalf of plaintiff, being first duly sworn, testified as follows:

I have been practicing law at Mountainhome for about twenty years. I know Trathen and had some accounts against him for collection in July, 1911. I did not call the attention of [27] the Stockgrowers' State Bank to this fact at the time their mortgage was taken. All of these accounts I held were included in the mortgage. I supposed I would get the money due on these accounts out of the loan, but did not. I talked with Mr. Trathen and Mr. Green, the latter representing the Stockgrowers' Bank. Trathen knew I had the accounts and it seemed that if he could get enough to take care of the accounts I held he would be able to get along nicely and take care of his business, and if he would give everything that he had practically, in the way of furniture, book accounts, etc., as security to the Stockgrowers' State Bank, they would give him the money. I understood the First National was wanting its loan cleaned up. The accounts I had amounted to a little over \$800.00. I was pressing these accounts while the First National had the mortgage against Mr. Trathen. Green knew at the time the Stockgrowers' Bank took the mortgage that I had these accounts. These accounts were not secured in any way.

**Cross-examination.**

As I remember, Trathen held out to us that the new mortgage would take care of his pressing ac-



(Testimony of E. M. Wolfe.)

counts and that he would be able to protect himself sufficiently if this arrangement was made and would be able to conduct his business as he had theretofore. I thought what he said was true.

Redirect Examination.

I don't think Trathen represented to me that the claims I had were all he owed, but he represented to me that they were all crowding him. I understood that he was securing all those that were due and pressing for payment. I don't think I had any idea as to what he owed. I receipted to Trathen for all his bills that I had. I was looking to the Bank and thought the bank would pay me my money. I talked to Mr. Green and the reason he gave me for not paying the money was that this stuff did not check out right. That the storehouse contained a lot of stuff that belonged to other people and was not the property of Mr. Trathen. I was [28] not the attorney for either of these banks at this time. Mr. Green was representing both of them.

**[Testimony of J. H. Whitson, for Plaintiff  
(Recalled).]**

J. H. WHITSON, being recalled, testified as follows:

I do not believe that Mr. Trathen rendered any accounts and paid over money from sales he made after we took our mortgage. He kept open and was offering goods for sale up to the time of foreclosure. He never at any time accounted for daily sales. He was in possession of his property until the sheriff



(Testimony of J. H. Whitson.)

took possession and was offering it for sale in the ordinary course of business. I imagine he made sales from time to time. The Stockgrowers' Bank bought the stock at the foreclosure sale. I do not know the amount for which the bank bid in this property. I did not give Trathen's account credit for any sum whatever on our books.

Cross-examination.

It was my understanding our bank foreclosed this mortgage because Mr. Trathen failed to meet the terms of it.

**[Testimony of F. E. Austin, for Plaintiff  
(Recalled):]**

F. E. AUSTIN, recalled, testified as follows:

During the time the First National Bank held a mortgage on Trathen's goods, he was in possession selling in the ordinary course of business, making his customary deposits and withdrawals but he did not report particularly as to what he had sold or how much, nor have it specifically applied on the mortgage. I take it that he was buying new goods and selling out what goods were in.

**[Testimony of W. H. Savidge, for Plaintiff.]**

W. H. SAVIDGE, a witness on behalf of plaintiff, being first duly sworn, testified as follows:

I am referee in bankruptcy. The Trathen estate has been referred to me.

The following is a statement of the names of parties who have filed claims against the estate and the amount of each claim, and the date of the last item in the account: [29]

(Testimony of W. H. Savidge.)

Hazzard & Markinson Company for \$36.65; the item shown on their bill, attached to their proof, April 26, 1911; the claim of Chippenden & Eastman Company, \$580.03; the last item is April 5, 1911; the claim of Wm. Volker & Co.; September 29, 1908, there were five credits after that time; the bill as proven is \$51.11 as credits were during 1908 and 1910 the last credit was November 21, 1910, for \$20.00; the claim of McEntyre Bros. August 10, 1910; \$26.00 is their proven claim; Burley & Tyrell Co. September 21, No. November 14, 1910; there was a cash payment—credit afterward; the bill is \$50.11; F. S. Harmon & Co., \$40.45; the last item is February 20, 1909; Art Manufacturing Co., \$27.50 with interest thereon from the 12th day of December, 1909; 33 Heywood Bros. and Wakefield Company, March 27, 1911, \$20.45; Nulac Co., \$16.00; that simply gives June 30th without any year; Salt Lake Mattress & Manufacturing Co., \$112.83, May 15, 1911; Allen, Wright Furniture Company, December 8, 1910, \$44.20; Simmons Hardware Company, February 23 —I simply name there the date of the last item; the amount is \$153.40; Crystal Refrigerator Company, March 3d, \$57.18; the H. Lauter Company, June 1, \$41.86; Electric Paint & Varnish Company, April 15, 1911, \$32.45; Boyle Furniture Co., \$841.23; July 27, 1911, \$30.00. The item before that was \$9.80 on July 18, 1911, and the item before that is July 13, 1911, \$34.92. All of the other items were prior to July 13. Those are all of the claims filed, sworn to and approved.

(Testimony of W. H. Savidge.)

Cross-examination.

The plaintiff here had an investigation of this matter before me at Mountainhome, Mr. Trathen, Mr. Whitson, Mr. Green, Mr. Herder, Mr. Corker were witnesses. I think Mr. Montgomery and some other gentlemen from the bank besides Mr. Whitson. I think it was Mr. Jacobson. I think Mr. Lee did not testify. They went into the matter quite fully. I know nothing of these accounts and claims except as the bills show them. [30]

[**Testimony of E. M. Wolfe, for Plaintiff  
(Recalled).]**

E. M. WOLFE, being recalled, testified as follows:

I do not suppose, although I do not remember, that any of the accounts I had for collection are included in the list given by Mr. Savidge. I do not remember anything about it, but I do not see how that could be.

Plaintiff rested thereupon.

[**Evidence of Defendant.**]

Whereupon the defendant introduced the following evidence:

The note of Thomas Trathen for \$3,147.84 to the Stockgrowers' State Bank dated July 13, 1911, was then introduced as Defendant's Exhibit "A." A copy of it is to be found in the mortgage to the Stockgrowers' Bank, a copy of which mortgage is attached to the answer of that defendant. An assignment to the First National of the mortgage

(Testimony of E. M. Wolfe.)

given by Trathen to Evans and Owens was then received in evidence. This assignment is dated the 13th day of June, 1911, and is signed and acknowledged by the said *mortgages* and is in all respects in legal form.

Whereupon the case was submitted to the Court; but, after argument, plaintiff was permitted to amend his bill of complaint and the following proceedings were had:

**[Testimony of Thomas Trathen, for Plaintiff.]**

THOMAS TRATHEN, a witness on behalf of plaintiff, being first duly sworn testified as follows:

I reside at Hammett and am the bankrupt in this case. The mortgage to the Stockgrowers' Bank was upon my entire stock of goods. I don't know as any exact inventory was taken at the time of giving the mortgage. I think somewhere about a month or two before that time I did make a statement to the bank as nearly as I can get at it as to what the inventory did amount to. Shortly previous to the sheriff's sale an exact inventory was taken by Mr. Cowan. I assisted him some. This was somewhere about three or four months after the giving of the mortgage. There was very little change in the condition of the stock between the giving of [31] the mortgage and the taking of the inventory. The inventory showed the goods to be worth about \$2,500.00, and they were purchased at the foreclosure at the exact figures shown by the inventory.

The sales and purchases were both very light and



(Testimony of Thomas Trathen.)

amounted to about the same. The value of the goods was about the same. There was no arrangement between myself and the bank whereby it was to bid the stock in for the amount the inventory showed it to be worth. I had two lots at the time of the giving of the mortgage and had an interest in the dwelling property I was living in. That was all the property I had outside of the stock of goods. There was a cloud on the title of these lots and a five hundred dollar mortgage on them. I think that mortgage was about one-half paid. I consider the lots worth about Five Hundred Dollars. The only offer I had for them was three hundred fifty.

I also had two lots with my home on them. There were three different mortgages on those lots. They were sold in the case of the Mountainhome Lumber Company against me by the sheriff in foreclosure on the 7th day of April, 1911. There was no difference in my financial condition between the time of giving the mortgage and my being adjudicated a bankrupt.

I had an agreement with Smith and Moyses that they would take up the other mortgages on my home and allow me six months to redeem in. They held the third mortgage. They afterwards went back on their agreement.

#### Cross-examination.

My home was built about two years previous to the foreclosure. It cost me better than forty-three hundred dollars. I think that was what it was worth at the time of giving the mortgage to the Stockgrowers' State Bank, a little more, perhaps



(Testimony of Thomas Trathen.)

for there were some improvements in the shape of lawn, trees, [32] cement walks and the like.

The property was sold under foreclosure for \$2,600.00. That included all of the mortgages except \$600.00 to Smith and Moyses. The three lots cost \$425.00 and the same number of lots across the alley facing the street but not as desirable as mine sold two years after for \$650.00. I think with the improvements that it had a value in excess of forty-three hundred dollars.

Shortly before giving the mortgage to the stock-growers' State Bank they requested a statement and I made one to them. I had made two or three previous statements from year to year.

I bought the furniture property from Cowan. I made written statements to the First National from time to time of my financial conditions.

The statements made by Trathen to the First National Bank in 1908 and in 1909 having been identified, were offered in evidence and on objection were refused admission as being too remote in time. A similar statement, dated January 12, 1910, was admitted. The material parts of it are as follows:

(Testimony of Thomas Trathen.)

[Excerpts from Statement, Dated January 12,  
1910.]

Mountainhome, Idaho.

Statement June 12, '10.

Furniture stock .....	\$5350.00	
House .....	3300.00	
Two lots .....	350.00	
Furniture in house.....	2200.00	
Great Western note....	750.00	and int.
Forty acre water right ..	1000.00	applied at Sunny-
		side.
120      "      "      "		held as security.
Acct. due.....	1150.00	

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#### INDEBTEDNESS.

Mortgage on house .....	\$2580.00	
		including First
		Nat. Note.
On stock .....	2400.00	
Evans Baily note .....	500.00	
		net \$8670.60.

[33]

In addition I have 160 acres desert at Sunnyside 60 acres cleared and burned this season at a cost of \$200.00. I have \$4000.00 in notes for locating that will be due after segregation is allowed by the state.

Signed—THOMAS TRATHEN.

(Witness continuing:) My stock at the time of the mortgage to the Stockgrowers' Bank was a little better grade of goods than that I purchased of Cowan. It was not so much of staples, such as

(Testimony of Thomas Trathen.)

mattresses and springs. He carried a larger whole-sale stock. I should say it compared very favorably. In my statement of June, 1910, I gave the stock of goods as worth \$5,330.00 that was the value of that stock in my opinion.

At the time I made this report in June, 1910, I also had 160 acres of desert land at Sunnyside. I still had it at the time I gave the mortgage to the Stockgrowers' State Bank, July, 1911. I made the entry on October 12, 1907, and it was regular in all respects and had not been cancelled. I got two years' extension and this afternoon I expect to ask a further extension. I consider it worth at that time five hundred dollars. I paid two hundred dollars besides making improvements, costing about two hundred dollars.

I also had some notes in the amount of about four thousand dollars. They were conditional notes given by some parties whom I had located on lands at Sunnyside. If the segregation went through, they were to pay me these notes; if they did not I was to release them. The time had not expired for the determination of that question at the time I gave the mortgage to the Stockgrowers' State Bank in 1911. It was still pending before the public officers.

Redirect.

The segregation I spoke of did not go through. These [34] notes never became actual assets. There has always been a possibility of getting water to this land and there was one at the time of giving

(Testimony of Thomas Trathen.)

the mortgage to the Stockgrowers' State Bank. The water right I had for this land had never been applied to it and the Great Western Beet Sugar system can never supply any water for it. I listed the house and lot in this statement at thirty-three hundred dollars, but that is not what I consider it worth on June 12, 1910. I made improvements from that time on. The place cost me forty-two hundred dollars with improvements.

Recross-examination.

My Sunnyside land is in an Irrigation District. In July, 1911, the District had not been organized. There was just the Water Users Association.

**[Testimony of J. M. Cowen, for Plaintiff.]**

J. M. COWEN, a witness on behalf of plaintiff, being first duly sworn, testified as follows:

I reside at Mountainhome. I am an undertaker but was formerly in the furniture business. Was engaged in that business at Mountainhome for three years. I sold that business to Trathen. I made an inventory of his stock of goods in 1911. It was taken from bills Trathen had largely and also from catalogues, when we could not find the bills. We also took the cost price as marked on them. In fixing the values we consider the cost of the goods, the wholesale prices of the different firms and added the freight. Most of the goods were in good condition. The price fixed was the full value of the goods on that basis. I am not positive about it but I think I reported the value of these goods to Mr. Montgomery. I think the inventory was some-

(Testimony of J. M. Cowen.)

where in the neighborhood of forty-five hundred dollars.

Cross-examination.

That stock of goods had a value as a growing concern in excess of the value of the articles total up. If a person bought the stock to continue the business it would have a better [35] value than what the inventory would show.

**[Testimony of L. B. Green, for Plaintiff.]**

L. B. GREEN, a witness on behalf of plaintiff, being first duly sworn, testified as follows:

I was the attorney for the Stockgrowers' State Bank in taking this mortgage and the foreclosure of it. I had an inventory taken by Mr. Cowen and Mr. Trathen just before the sale. I think it showed something like twenty-six hundred dollars. I think the bid at the sheriff's sale was the same amount as shown by the inventory. The bid at the sheriff's sale was \$2,465.18, as appears from the return now shown me.

**[Testimony of C. E. Norrell, for Plaintiff.]**

C. E. NORRELL, a witness on behalf of plaintiff, being first duly sworn, testified as follows:

I have lived at Mountainhome for the past seven years, *being the* insurance and real estate business. I am acquainted with the market value of real estate in Mountainhome and was on July 13, 1911. I know the Trathen home place. Its fair value at that time was not to exceed three thousand dollars. The fair value of the two lots in Linton's addition would not exceed two hundred fifty dollars.



(Testimony of C. E. Norrell.)

I should not consider that the desert entry had any real value on the 13th day of July, 1911. It might have a speculative value.

Cross-examination.

It might have had a market selling value.

Redirect Examination.

Desert entries around Mountainhome and Sunnyside never had any real value—just taken for speculation. I don't know of any desert entries selling or changing hands in the vicinity of Sunnyside at that time.

**[Testimony of C. E. Corker, for Plaintiff  
(Recalled).]**

C. E. CORKER, being recalled, testified as follows:

I have lived at Mountainhome since 1894 except five or six years I lived at Glenn's Ferry. I have been interested in matters at Mountainhome and that vicinity since 1879. I have had considerable experience in the matter of making loans in that vicinity and investigating the values of property. I think the [36] fair value of the Trathen home place would not exceed twenty-seven hundred dollars.

Plaintiff thereupon rested.

**[Testimony of L. B. Green, for Defendants.]**

L. B. GREEN, being called as a witness on the part of the defendants, testified as follows:

I was attorney for the Stockgrowers' State Bank and the First National Bank in July, 1911, regard-

(Testimony of L. B. Green.)

ing this transaction. There was a meeting of the directors of the First National and Mr. Chattin phoned me to come down and I think instructed me to prepare notes and mortgages to include the Trathen debt at that bank and some debts Mr. Wolfe had. I went with Mr. Trathen to get the amount of these debts when the cashier told me I need not draw the papers and I did not. I think Mr. Chattin was the next one who spoke to me about the matter. He said he was trying to get the loan for Trathen at the Stockgrowers' State Bank and it may have been three or four days after that when he told me to draw the papers for the Stockgrowers' State Bank and to cover the amount of the debts Wolfe had and that held by the First National. I had talked with Trathen about the matter. The mortgage was to cover the stock in the two buildings, and I think some book accounts, also some contracts for furniture sold on the installment plan. After the mortgage was given Trathen had charge of the business running it.

At the time of his talking to the officers of the First National I was present and it was stated that the stock was valued at between forty-five hundred and five thousand dollars. I think nearer forty-five hundred dollars. Trathen stated at that time he was quite sure it would be all right if these debts were paid and the debts Mr. Wolfe had. I understood Wolfe had all the debts that were pressing against Mr. Trathen except the mortgage on the house.

(Testimony of L. B. Green.)

Cross-examination.

I think Mr. Austin was present when I was at the First [37] National Bank. I made no inquiry of other attorneys at Mountainhome as to whether they had accounts against Trathen. Trathen said Wolfe was pressing his claims for collection. I knew that Trathen was being forced at that time to give a mortgage on his stock of goods in order to stave off accounts that were pressing him for payment. I did not make any inquiry to find out if there were any other accounts. I had had some before myself and they had been paid. The loan he first attempted to get from the First National and afterwards got from the Stockgrowers was through Mr. Chattin—that is, he was the man in the directors' meeting of the First National who was friendly to the loan. The cashier did not want the additional loan and Chattin did. He directed me to make this mortgage for the Stockgrowers.

**[Testimony of Thomas Trathen, for Defendants  
(Recalled)].**

THOMAS TRATHEN, recalled as a witness on behalf of the defendants, testified as follows:

I had been in the habit of reporting my financial conditions at Mountainhome to the First National Bank for several years prior to July 1st, 1911. I signed Defendants' Exhibit "D." The report was true to the best of my judgment and was given to the First National with the view of getting credit upon it.

Exhibit "D" was then admitted in evidence and its material parts are as follows:

**[Defendants' Exhibit "D"—Application for Credit.]**

Application for Credit.

Place, Mt. Home, Date March 16, '09.

For the purpose of obtaining credit at the First National Bank, Mountainhome, Idaho, I state that I am at this date, worth in my own right in property not exempt from execution, above all liabilities at least five Thousand dollars and that such property is composed of the following with encumbrances as specified.

	Value.	Encumbrance thereon.
Stock furniture .....	\$5200.00	\$2575.00
Dwelling .....	3300.00	2580.00
2 lots .....	350.00	
Household furniture .....	2000.00	
Accts. due .....	800.00	
40 acres water right.....	1000.00	
Great Western Beet Sugar Co. notes .....	750.00	
<hr/>		
Other indebtedness .....	\$13400.00	
To 90-day note Bailey & Evans .....		500.00
To .....		[38]
To .....		
<hr/>		
Miscellaneous ..... Total,		\$5655.00

IN CONSIDERATION of the granting of such

credit to me by said Bank, I agree that in case any change occurs that materially reduces my ability to pay all claims and demands against me, I will notify said Bank without delay.

(Signed) THOMAS TRATHEN.

The same is true of Exhibit "C," which report I made to the First National Bank asking for credit in September, 1908. Exhibit "C" was then introduced in evidence and its material parts are as follows:

**[Defendants' Exhibit "C"—Report, Asking for Credit.]**

Financial Statement Sept. 11th, 1908.

Stock of Goods.....	\$5400.00	
House & Lots.....	3250.00	
6 lots .....	750.00	
Household Furniture .....	2000.00	
Accts. due .....	970.00	\$12370.00
Accounts owing for stock...	\$2600.00	
Note R. W. Smith.....	500.00	
Mortgages on house (W. Blackman) .. ....	1500.00	
Mortgages on house (Mt. Home Lumber Co.) ....	280.00	4880.00
		<hr/>
		\$7690.00

Over and above all indebtedness.

In addition to above I have 120 acres of water right and a fling on 160 acres of land in section 22, Sunny Side tract.

THOMAS TRATHEN.



(Testimony of **Thomas Trathen.**)

I met the Directors of the First National about the time I executed the mortgage under controversy and we talked over the situation. I told them that these claims were pressing and they asked me a few questions along the line of the condition of the stock and other things and I gave them a reply. It was substantially the same as the last report you have there with the exception of possibly some little reduction in the amount of the stock. I went into details in the condition of my finances generally. I wanted them to take up these accounts. Mr. Montgomery was the man who asked me the questions as I remember it. I told him there was not much business doing. He seemed to think there would be a little later on. I told him I thought if I could take up these accounts I would be able to take up other little accounts due; that they were the only ones pressing. I told him I had some accounts and notes to turn in as collateral. I think two or three days afterwards Green notified me that I was wanted at the Stockgrowers' State and I went there but they were busy and did not want me just then. They notified me that Mr. Green would attend to the business and the loan would be granted and the Stockgrowers' State Bank would take up the mortgage in place of the ——— and take up the First National account. I [41] don't remember of any accounts presented to me between the time of the execution of the mortgage and its foreclosure. There might have been some very small ones but I don't remember. I think I paid several little claims after that. I told

(Testimony of **Thomas Trathen.**)

the bank that those accounts were in Mr. Wolfe's hands and amounted to something like six hundred dollars and that if I could take them up I would be able to continue business. Business looked a little favorable and I told them I thought possibly I could pull through and make the business pay out.

Cross-examination.

I did not want to turn the stock over to the bank at that time but later on I did. I testified before the Referee in Bankruptcy on June 10, 1913, and among other things, I said, that at the time the mortgage was given, I had very little hope of things going ahead here; that the bank officers rather thought that things would pick up and that they were willing to take a chance with me; that they wanted me to hold the stock and try and pull out at the time of foreclosure; that I tried several times to induce them to take it off my hands because it was not paying expenses; that my idea in giving the mortgage was to secure them, and that it was agreed between the two banking concerns to transfer that account in lieu of this other mortgage, and that they would take up the account with the First National. That was my testimony. My application for a loan was to the First National and the next I heard of it I was told to go to the Stockgrowers' State Bank and Green would draw up the papers and I got the money from the Stockgrowers. I never made any arrangement whatever for getting it from the Stockgrowers. Chattin was very much instrumental in getting me the loan. He was friendly to me. I made no representations for

(Testimony of **Thomas Trathen.**)

the Stockgrowers' State. I had other debts owing at the time. I owed Chippenden-Eastman Co. but it was not [42] in Mr. Howie's hands for collection at the time. I don't remember of any conversation with Mr. Howie in regard to this matter. I gave a statement to the First National Bank of my debts and told them that I owed other debts. The total amount was about two thousand dollars. About a year before the cashier of the First National looked over my inventory books—that was Mr. Reckmyer. The next inventory was after they started to foreclose.

Redirect.

I spoke to Mr. Chattin on the street two months after giving the mortgage and he asked me how I was getting along and I said, "Nothing doing; I guess you will have to take that stock and get something out of it." The conversation I had in which I spoke of turning over the stock and I testified to at the Referee hearing was one that took place several months after the foreclosure.

I did not at or before the time of giving the mortgage try to get the officers or any of them to take the stock, but I did at the time or shortly before the foreclosure proceedings.

[**Testimony of L. B. Green, for Defendants**  
(Recalled).]

L. B. GREEN, recalled as a witness on behalf of the defendants, testified as follows:

Trathen came to me and told me Howie had come with a claim and that he wanted the bank to pay out the money for this additional claim. This was a

(Testimony of L. B. Green.)

very few days, almost within a week before the foreclosure. That was the first I knew of it. The bank was surprised that there were other claims and they were disappointed or disgusted because Trathen became interested in some mines and had locked up the door and left the business in charge of the boy, and had gone over to Silver City for a week or ten days or two weeks and, as a result of the discussion we had the mortgage was foreclosed. At the time of taking this mortgage I understood that these were all of the claims. I got this [43] understanding from Mr. Trathen and the Directors of the First National on the first evening.

**[Testimony of W. C. Howie, for Plaintiff.]**

W. C. HOWIE, called as a witness on behalf of the plaintiff, testified:

I am an attorney at law and reside at Mountain-home for twenty-three years last passed. I think I had one or two little claims against Trathen and a large one of Chippenden-Eastman Co. I received them the early part of the summer of 1911. I am very positive about this. I went to Trathen about the account and he said he would try to arrange it. I went to him repeatedly and he said he was trying to get a loan through Chattin. I went quite a number of times because his store was shut a good deal and he was gone. I went for many times and could not find him. Finally he said Chattin had refused to take up that claim. Then I went to the Recorder's office and found this mortgage on file it had not been on file when I first talked with Trathen. I told him if he did not get



(Testimony of W. C. Howie.)

the money I would shut him up. He said he could not get the money. The next thing I knew the foreclosure proceedings were commenced and the property was in the hands of the sheriff. Thereupon the case was submitted to the Court for its decision.

**Order Settling Statement of Evidence.**

The above and foregoing is settled as the statement of the evidence herein, the same being the evidence taken upon the trial stated in simple and condensed form, all parts not essential to the decision of the questions presented by the appeal being omitted and the testimony of the witnesses being stated only in narrative form.

December, 1913.

FRANK S. DIETRICH,  
District Judge.

[Endorsed]: Filed Dec. 27, 1913. A. L. Richardson, Clerk. [44]

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*In the District Court of the United States for the  
District of Idaho, Southern Division.*

CHARLES E. CORKER, Trustee of the Estate of  
THOMAS TRATHEN, a Bankrupt,  
Plaintiff,

vs.

STOCKGROWERS' STATE BANK OF MOUNTAINHOME and THE FIRST NATIONAL  
OF MOUNTAINHOME,

Defendants.



### **Assignment of Errors.**

And now come the defendants, Stockgrowers' State Bank of Mountainhome and First National Bank of Mountainhome, by their solicitors, and having prayed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree entered in the above cause on the 30th day of October, A. D. 1913, say that the said decree, made and entered as aforesaid is erroneous and unjust to these defendants and to each of them and particularly in this:

1st. Because the District Court erred in holding and concluding that the said Thomas Trathen was insolvent on said 13th day of July, 1911,

2d. Because the District Court erred in holding and concluding that the officers and directors or officers or directors or both or either of the defendants, knew on the 13th day of July, 1911, or at any other time or at all that Thomas Trathen was insolvent and unable to meet his obligations or was insolvent or unable to meet his obligation.

3d. Because the District Court erred in holding and concluding that the officers and directors or officers or directors, [45] or both or either of these defendants, conclusively or fraudulently or for any purpose or at all planned and agreed with each other and with said Trathen or at all that the amount of the same Trathen should be ostensibly or at all transferred from the said First National Bank to said Stockgrowers' State Bank, should make a pretended or any loan to said Trathen or

should secure from him any chattel mortgage whatsoever.

4th. Because the District Court erred in holding and concluding that in accordance with any such or any other agreement said Trathen did without consideration execute and deliver said note to said or any Stockgrowers' State Bank, or that he gave the said mortgage to said Stockgrowers' State Bank in accordance with any such or any agreement or understanding between said defendants.

5th. That the District Court erred in holding and concluding that the foreclosure and sale under said chattel mortgage was other than a *bona fide* transaction and proceeding for the enforcement of a valid chattel mortgage.

6th. Because the District Court erred in holding and concluding and decreeing that this or any part of said stock of furniture, notes and accounts constituted a part of the assets of said Trathen at the time he was adjudicated a bankrupt.

7th. Because the District Court erred in holding and concluding that the defendant First National Bank has ever had said furniture, notes or accounts in its possession.

8th. Because the said District Court erred in holding, concluding and decreeing that the matters set forth in plaintiff's Bill of Complaint or shown by the evidence operated as a preference or to secure a preference for either of these defendants.

9th. Because the said District Court erred in holding, concluding and decreeing that either of these defendants or their or either of their agents had

reasonable or any cause to believe [46] that the endorsement of the said note and mortgage or either of them would effect any preference whatsoever.

10th. Because the District Court erred in holding, concluding and decreeing that the transfer and mortgage or transfers or mortgage made and executed by said Trathen to said Stockgrowers' Bank was null and void as against the rights of other creditors of said Trathen or at all.

11th. Because the District Court erred in holding, concluding and decreeing that the said First National Bank by said transfer obtained a greater percentage of its debt against said Trathen than other creditors of the said class.

12th. Because the District Court erred in holding, concluding and decreeing that the said sale by the sheriff of Elmore County was and is or was or is null and void.

13th. Because the District Court erred in holding, concluding and decreeing that plaintiff should have or recover of and from said defendants or of or from either of them the said furniture described in said decree or any part thereof, or of said notes or accounts in said decree referred to.

14th. Because the District Court erred in holding, concluding and decreeing that if defendants do not redeliver said property to plaintiff in 30 days or at all from and after the filing of said decree that plaintiff have execution against said defendants or against either of them for any sum whatsoever.

15th. Because the District Court erred in hold-

ing, concluding and decreeing that plaintiff have interest on the same decreed plaintiff from the 18th day of November, 1911, or from any other time or at all. [47]

16th. Because the District Court erred in holding, concluding and decreeing that the said defendant Stockgrowers' State Bank was not entitled to the benefit of and did not hold a first lien upon the said stock of furniture superior in all respects to and not subject to the claims of the said plaintiff herein and of all other creditors of said Trathen.

17th. Because the District Court erred in holding, concluding and decreeing that the defendant Stockgrowers' State Bank was entitled to no relief by reason of the matters set forth in the VII paragraph of the answer of said defendant.

Wherefore these defendants pray that the said decree be reversed, that the District Court be directed to dismiss complainant's bill.

E. M. WOLFE,  
WYMAN & WYMAN,  
Solicitors for Defendants.

Service of the foregoing Assignment of Error and receipt of a copy thereof admitted this 19th day of December, 1913.

HARRY S. KESSLER,  
per E. M.,  
Solicitors for Plaintiff.

[Endorsed]: Filed Dec. 19, 1913. A. L. Richardson, Clerk. [48]



*In the District Court of the United States for the  
District of Idaho, Southern Division.*

CHARLES E. CORKER, Trustee of the Estate of  
THOMAS TRATHEN, a Bankrupt,  
Plaintiff,

vs.

STOCKGROWERS' STATE BANK OF MOUN-  
TAINHOME and THE FIRST NATIONAL  
OF MOUNTAINHOME,

Defendants.

**Petition for Appeal and Order Allowing the Same.**

The above-named defendants in the above-entitled cause, Stockgrowers' State Bank of Mountainhome and First National Bank of Mountainhome, conceive themselves aggrieved by the order and decree made and entered by the above-entitled court in the above-entitled cause on the 30th day of October, 1913, and do hereby appeal for the United States Circuit Court of Appeals for the 9th Circuit for the reasons as set forth and specified in the Assignment of Errors, which is filed herewith; and said defendants pray that this appeal may be allowed and that citation issue as provided by law and that a transcript of the records, proceedings and papers on which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

E. M. WOLFE,  
WYMAN & WYMAN,  
Solicitors for Defendants.



Service of the foregoing Petition and receipt of a copy thereof admitted this 19th day of December, 1913.

HARRY S. KESSLER,  
per E. M.,  
Solicitors for Complainant. [49]

**[Order Allowing Appeal.]**

AND NOW, to wit, on the 19th day of December, 1913, it is ordered that the petition be granted and that the appeal be allowed as prayed for.

FRANK S. DIETRICH,  
District Judge.

[Endorsed]: Filed Dec. 19, 1913. A. L. Richardson, Clerk. [50]

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*In the District Court of the United States for the  
District of Idaho, Southern Division.*

CHARLES E. CORKER, Trustee of the Estate of  
THOMAS TRATHEN, a Bankrupt,  
Plaintiff,

vs.

STOCKGROWERS' STATE BANK OF MOUNTAINHOME and THE FIRST NATIONAL BANK OF MOUNTAINHOME,  
Defendants.

**Bond.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, the Stockgrowers' State Bank of Mountainhome and the First National Bank of Mountainhome, as principals, and the United States Fidelity

and Guaranty Company of Baltimore, Maryland, a corporation, organized under the laws of the State of Maryland, as surety, are held and firmly bound unto Charles E. Corker, Trustee of the estate of Thomas Trathen, a bankrupt, in the penal sum of One Thousand Dollars, to be paid to the said Charles E. Corker, Trustee of the estate of Thomas Trathen, a bankrupt, his successors in trust, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents. Sealed with our seals and dated this 17th day of December, 1913. Whereas, the above-named defendants, 'Stockgrowers' State Bank of Mountainhome and the First National Bank of Mountainhome, have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree in the aforesaid suit made and entered in the said United States District Court for the District of Idaho, Southern Division, on the 30th day of October, A. D. 1913.

Now, therefore, the condition of this obligation is such that if the above-named defendants and appellants shall prosecute [51] their said appeal to effect and answer all costs if they fail to make their said plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF the said defendants, Stockgrowers' State Bank of Mountainhome and the First National Bank of Mountainhome, have caused their names to be subscribed hereto and their seals to be affixed and the said United States Fidelity and

Guaranty Company of Baltimore, Maryland, as surety, has caused its name to be subscribed and its corporate seal to be affixed by its attorneys in fact thereunto duly authorized by its Board of Directors.

STOCKGROWERS' STATE BANK OF  
MOUNTAINHOME.

[Seal] By J. H. WHITSON,  
As Its Cashier.

FIRST NATIONAL BANK OF MOUN-  
TAINHOME.

[Seal] By WILL T. MONTGOMERY,  
As Its Asst. Cashier.

UNITED STATES FIDELITY AND  
GUARANTY COMPANY OF BALTI-  
MORE, MARYLAND.

[Seal] By ELIZABETH GREENWALD, and  
E. M. WOLFE,  
Its Attorneys in Fact.

The form of the foregoing bond and the sufficiency of the sureties is approved this 19th day of December, 1913.

FRANK S. DIETRICH,  
District Judge.

[Endorsed]: Filed Dec. 19, 1913. A. L. Richardson, Clerk. [52]

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

CHARLES E. CORKER, Trustee of the Estate of  
THOMAS TRATHEN, a Bankrupt,  
Plaintiff,

vs.

STOCKGROWERS' STATE BANK OF MOUN-  
TAINHOME and THE FIRST NATIONAL  
BANK OF MOUNTAINHOME,  
Defendants.

**Praeceptum for Transcript on Appeal.**

To the Clerk of the Above-entitled Court:

The appellants herein desire that there should be incorporated into the transcript on the appeal taken herein the following and no other portions of the record:

The complaint;

The answers of the defendants:

The decree;

The statement of the evidence;

The assignment of errors;

The petition for appeal and order allowing the same;

The bond on appeal and approval thereof;

The citation,

E. M. WOLFE,

WYMAN & WYMAN,

Defendants' Solicitors.

The appellee herein consents that the transcript may consist of the above and foregoing papers and

accepts due service of the above and foregoing praecipe.

December 22, 1913.

W. C. HOWIE and  
HARRY S. KESSLER,  
Appellee's Solicitors.

[Endorsed]: Filed Dec. 23, 1913. A. L. Richardson, Clerk. [521½]

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[Citation on Appeal (Original).]

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

CHARLES E. CORKER, Trustee of the Estate of  
THOMAS TRATHEN, a Bankrupt,  
Plaintiff,

vs.

STOCKGROWERS' STATE BANK OF MOUNTAINHOME and THE FIRST NATIONAL  
BANK OF MOUNTAINHOME,  
Defendants.

United States of America,—ss.

The President of the United States to Charles E. Corker, Trustee of the Estate of Thomas Trathen, a Bankrupt, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the city of San Francisco, State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the District Court of the



United States of the District of Idaho, Southern Division, wherein you are the complainant and appellee, and the Stockgrowers' State Bank of Mountainhome and First National Bank of Mountainhome are defendants and appellants, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf;

Witness, the Honorable EDWARD DOUGLASS WHITE, [53] Chief Justice of the Supreme Court of the United States of America, this 19th day of December, A. D. 1913, and of the Independence of the United States the one hundred thirty-eighth year.

FRANK S. DIETRICH,  
United States District Judge for the District of  
Idaho.

[Seal]                      Attest: A. L. RICHARDSON,  
Clerk.

Service of the foregoing citation and receipt of a copy thereof admitted this 19th day of December, 1913.

W. C. HOWIE,  
HARRY S. KESSLER,  
Solicitors for Complainant. [54]

[Endorsed]: No. 449. In the District Court of the United States for the District of Idaho, Southern Division. Charles E. Corker, Trustee of the Estate of Thomas Trathen, a Bankrupt, Plaintiff, vs. Stockgrowers' State Bank of Mountainhome and the First National Bank of Mountainhome, Defendants. Citation. Filed Dec. 19, 1913. A. L. Richardson, Clerk. [54½]

**Return to Record.**

And thereupon it is ordered by the Court that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

[Seal]                      Attest: A. L. RICHARDSON,  
Clerk. [55]

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**[Certificate of Clerk U. S. District Court to  
Transcript of Record.]**

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

CHARLES E. CORKER, Trustee of the Estate of  
THOMAS TRATHEN, a Bankrupt,  
Plaintiff,

vs.

STOCKGROWERS' STATE BANK OF MOUN-  
TAINHOME and THE FIRST NATIONAL  
BANK OF MOUNTAINHOME,  
Defendants.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 56, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein upon appeal, in accordance with the praecipe on file herein, to the

United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of \$33.90, and that the same has been paid by the appellant.

Witness my hand and the seal of said Court, affixed at Boise, Idaho, this 5th day of January, 1914.

[Seal]

A. L. RICHARDSON,

Clerk. [56]

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[Endorsed]: No. 2368. United States Circuit Court of Appeals for the Ninth Circuit. Stockgrowers' State Bank of Mountainhome, a Corporation, and the First National Bank of Mountainhome, a Corporation, Appellants, vs. Charles E. Corker, Trustee of the Estate of Thomas Trathen, a Bankrupt, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Idaho, Southern Division.

Received and filed January 14, 1914.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,

Deputy Clerk.